fers special damage should have an action for redress. But while it would be *prima facie* unlawful, yet when a public convenience demands it, the legislature has authority under its police power to legalize such use in certain cases. *Sawyer* v. *Davis*, 136 Mass. 239. If the operation of cable cars without legislative authority by an individual would be illegal, it is hard to see why it should be any the less illegal if done by a corporation. The court, however, says that the question whether the corporation has exceeded its chartered powers can only be raised in a direct proceeding by the state, and not collaterally in a suit by a private person. This is a broad statement of a rule that is rapidly gaining ground in our courts. 36 Am. Law Register, New Series, 18. While there may be much necessity for such a rule in certain cases where the question of corporate existence is involved, yet it is hardly justified in the principal case, where the gist of the question is not whether the corporation's act is *ultra vires*, but rather whether the legislature has legalized an act which is *prima facie* unlawful, whether it be done by a corporation or by an individual.

COVENANTS FOR PARTY WALLS. — Where owners of adjoining lots covenant that if either party builds, one wall may be placed on their boundary line, and the other party on using such wall shall pay for half its value, it is clearly expedient that such covenants should be enforceable both by and against the original owners or their subsequent vendees. The possible claim that exists where one party builds a wall is so intimately connected with the land that it ought to pass with its ownership, and the person subsequently using the wall is the proper party to pay for its value. Wherever the point has been raised, the courts have held that the covenants at all events could not be considered as running with the land, as they were thought to constitute a burden which would not run at law, and an active duty which would not run in equity. Judicial ingenuity has therefore been taxed to find other reasons for enforcing the liability.

The English court has recently, for the first time, grappled with the problem. *Irving* v. *Turnbull*, [1900] 2 Q. B. 129. In this case the plaintiff's vendor and the defendant at different times bought adjoining lots from the same person, it being covenanted in both cases that walls of buildings should be on the boundary lines, and that a party subsequently using such a wall should pay for half its value. The plaintiff's vendor built, and when defendants made use of this wall, the plaintiff sued for half its value. The court held, though "with no great confidence," that as covenants had been made with the original owner by both parties, directly or indirectly, there was sufficient privity between them to establish an implied promise. This reasoning seems unsound. The defendant never contracted with the plaintiff, but merely used a wall standing on his own land, which was, therefore, his own property. Under these circumstances it seems impossible on principle to raise an implied promise.

The American cases in which the point has arisen have generally reached this same result by holding that such an agreement means that the party first building shall have property in the entire wall until payment for half its value. Thus a subsequent user takes the property of another and a promise to pay is implied. *Maine* v. *Cumston*, 98 Mass. 317; *Burlock* v.

Peck, 2 Duer, 90. But this doctrine has great faults. Such an agreement does not fairly mean that property in the whole wall shall be in the builder, nor can this property pass to a subsequent user by the mere payment of money unless regarded as personal property, which the agreement certainly does not intend. If liability is to exist, some better principle for its support must be found.

It is submitted that the covenant may fairly be held to run with the land where the agreement has regard to any wall that may be built, and not to a specific wall which already stands or is about to be built. Such a wall vitally affects the improvement of the land, for it encourages the adjoining owner to build, knowing he may very probably be repaid half the expense of his wall. When a wall is once built, the covenant does not pass into a mere contingent claim for money, as it is a promise, not to pay for half of that particular wall built, but for any wall which is used. It thus tends to encourage the building of a second wall should the first be destroyed. Nor should it come under the rule that covenants imposing a burden do not pass to subsequent vendees, a doctrine to protect vendors from disadvantageous incumbrances, for though it imposes an obligation to pay money under certain circumstances, it may yet on the whole be considered to a subsequent vendor's advantage, as it tends to the establishment of a permanent party wall of which he may make use on payment of half value. Thus it seems that as the covenant affects the land, and is not properly a burden, it can be held to run. Where, on the other hand, the covenant refers to a specific wall about to be built, on the completion of the wall it no longer affects the land. It becomes a mere collateral claim to pay money for the use of the wall, since it does not apply to the building of a second wall, should the first be destroyed. Such a covenant, therefore, after the completion of the wall, should not run to the vendees of either lot. The agreement in the principal case, however, seeming to contemplate no particular wall, ought properly to be regarded as running with the land, and as most party wall agreements are similarly framed, the desired result of passing the covenants to subsequent purchasers could thus, in such cases, be reached, with no departure from principle.

RECENT CASES.

AGENCY — LIABILITY OF PRINCIPAL — SCOPE OF AGENCY. — A telegraph operator in the employ of the defendant forged and transmitted a fraudulent message to the plaintiff. *Held*, that the defendant is liable for losses occasioned to the plaintiff thereby. *Bank of Palo Alto* v. *Pacific Postal Tel. etc. Co.*, 103 Fed. Rep. 841 (Cir. Ct., Cal.).

It is clear that in general a principal is only liable for those torts of his agent which he has expressly authorized, or which are the result of acts reasonably incidental to the agent's employment. Moreover, this liability is entirely independent of the agent's motive. *Howe* v. *Newmarch*, 12 Allen, 49. Outside of these limits, the agent alone is responsible for his wrongful acts. *Rounds* v. *Delaware, etc. R. R. Co.*, 64 N. Y. 129. Obviously a telegraph operator has no express authority to transmit fraudulent messages, and it seems equally evident that such acts cannot reasonably be a proper method of performing his duties. Accordingly, the principal case holds the master for what is apparently a purely personal act of his servant. This result is, however, not without some support by the authorities, where, as here, the principal is engaged in serving the public under such circumstances that his agent's acts must of necessity